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REGULAR

NUMBER: 38.763

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING VARIOUS SECTIONS OF CHAPTER 10, TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO REGULATION OF SINGLE FAMILY RESIDENTIAL DISTRICTS AND PROCEDURES FOR PROVIDING PUBLIC NOTICE.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2004, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, 2004, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals and Findings.

- A. Pursuant to Government Code section 65853 and 65854, the Planning Commission of the City of Milpitas held a properly noticed public hearing March 24, 2004 to consider the amendments to Title XI, Chapter 10 of the Milpitas Municipal Code. In accordance with Government Code section 65855, the Planning Commission has rendered a decision in the form of a written recommendation, which was presented to the City Council prior to consideration of this Ordinance.
- B. Upon receipt of the Planning Commission's written recommendation, the City Council held a properly noticed public hearing on April 6, 2004.
- C. The City Council finds that this Ordinance does not render Title XI, Chapter 10 inconsistent with the City of Milpitas General Plan.

SECTION 2. Section XI-10-2.69-1.5 is hereby added to the Milpitas Municipal Code to read as follows:

2.69-1.5 Single Housekeeping Unit

The functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such as locked cabinets or doors. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for section 54.22.

SECTION 3. Sections XI-10-2.16 of the Milpitas Municipal Code is hereby amended to read as follows:

2.16 Boarding House

A building, or portion thereof, other than a hotel, where meals and lodging are provided for compensation including a bed and breakfast.

SECTION 4. Sections XI-10-2.31 of the Milpitas Municipal Code is hereby amended to read as follows:

2.31 Dwelling

A building, or portion thereof, designed exclusively for residential occupancy, including single-family, two-family, and multiple-family dwellings, but not including hotels.

SECTION 5. Sections XI-10-2.33 of the Milpitas Municipal Code is hereby amended to read as follows:

2.33 Dwelling, Single-Family

A detached building designed exclusively for occupancy by one (1) family for living purposes and having only one (1) kitchen.

SECTION 6. Sections XI-10-2.38 of the Milpitas Municipal Code is hereby amended to read as follows:

2.38 Family

An individual, or two (2) or more persons related by blood or marriage or legal adoption or joined through a judicial or administrative order of placement or guardianship; or unrelated persons who function together as a single housekeeping unit.

SECTION 7. Sections XI-10-2.44-1 of the Milpitas Municipal Code is hereby amended to read as follows:

2.44-1 Kitchen (for residential uses)

A residential kitchen shall be enclosed and interior to the dwelling unit utilized for the preparation of food and include two (2) or more of each of the following:

- a) A sink (typically larger than 14" x 17");
- b) A full size refrigerator (typically larger than 24" x 64");

- c) A 220-V electrical service outlet (typically used for major cooking appliances such as a stove, oven or cooking range).

SECTION 8. Sections XI-10-4.02-1 of the Milpitas Municipal Code is hereby amended to read as follows:

4.02-1 Principal Permitted Uses

Single-family dwellings that contain one (1) kitchen and have internal access to all rooms and common areas, except as provided for in Section 54.22.

SECTION 9. Sections XI-10-4.03-1 of the Milpitas Municipal Code is hereby amended to read as follows:

4.03-1 Accessory Uses

Boarding houses of not more than two (2) persons.

SECTION 10. Sections XI-10-6.03-1 of the Milpitas Municipal Code is hereby amended to read as follows:

6.03-1 Accessory Uses

Boarding houses of not more than two (2) persons.

SECTION 11. Sections XI-10-6.04-1 of the Milpitas Municipal Code is hereby amended to read as follows:

6.04-1 Conditional Uses

Boarding houses for three (3) or more persons.

SECTION 12. Sections XI-10-7.03-1 of the Milpitas Municipal Code is hereby amended to read as follows:

7.03-1 Accessory Uses

Boarding houses of not more than two (2) persons.

SECTION 13. Sections XI-10-7.04-1 of the Milpitas Municipal Code is hereby amended to read as follows:

7.04-1 Conditional Uses

Boarding houses for three (3) or more persons.

SECTION 14. Sections XI-10-8.04-1 of the Milpitas Municipal Code is hereby amended to read as follows:

8.04-1 Conditional Uses

Boarding houses for three (3) or more persons.

SECTION 15. Sections XI-10-38.03-1(y) of the Milpitas Municipal Code is hereby amended to read as follows:

38.03-1(y) Uses Permitted Subject to Receiving a Conditional Use Permit

Boarding houses for three (3) or more persons.

SECTION 16. Sections XI-10-53.23-1.2 of the Milpitas Municipal Code is hereby amended to read as follows:

53.23-1.2 Parking Schedule - Residential Land Uses

Boarding houses, dormitories, sororities and fraternities -- 1 sp/room rented.

SECTION 17. Sections XI-10-55.03-5 of the Milpitas Municipal Code is hereby amended to read as follows:

55.03-5 Area

Front Yard and Side Yard Waived - Dwelling Over Store. The front and side yards shall be waived for dwellings and hotels erected above the ground floor of a building when said ground floor is designed exclusively for commercial or industrial purposes.

SECTION 18. Sections XI-10-64.02-1 of the Milpitas Municipal Code is hereby amended to read as follows:

64.02-1 Manner of Giving Notice

For pre-zoning of unincorporated land; an amendment to the provisions of this Chapter (including Changes of Zone); an application for a variance or a conditional use permit or new "S" Zone and amendments pursuant to Section 42.10 or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:

- a) Publishing the notice in a newspaper of general circulation within the City.
- b) Posting one (1) sign notice per 1000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.
- c) Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters within three hundred (300) feet of the subject parcel's property boundaries. The Planning Director shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.
- d) Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code, to the owner of the subject real estate property and the applicant, respondent or appellant.
- e) Deleted.
- f) Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.

SECTION 19. Sections XI-10-64.02-4 of the Milpitas Municipal Code is hereby amended to read as follows:

64.02-4 Manner of Giving Notice

For cases not otherwise provided for herein: (and, except where otherwise required by the law of the State of California), notice shall be given by publication or posting or mailing, in the discretion of the City Manager, and in accordance with the provisions of Section I-20-2.02 of the Milpitas Municipal Code.

SECTION 20. Section XI-10-2.48 of the Milpitas Municipal Code is hereby repealed.

SECTION 21. Section XI-10-2.68 of the Milpitas Municipal Code is hereby repealed.

SECTION 22. Publication and Effective Date. Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

SECTION 23. Severability. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Motion to approve 1) Site and Architecture Review (SZ2003-12), Use Permit Nos. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1; 2) Use Permit No. UP2002-42 And Site and Architecture Review (SZ2003-13) and 3) Sign Ordinance Amendment No. 124.26 (ZT2003-5) based on the findings and conditions noted in the staff report revised by the memo provided at the meeting modifying Condition No. 7d and revised conditions stating that the landscaping plan, architectural plans and lighting plans come back to the Subcommittee in more detail.

M/S: Sandhu/Giordano

AYES: 4 (Sandhu, Chair, Giordano and Lalwani)

NOES: 3 (Garcia, Mohsin and Galang)

Ten minute recess

Chair Nitafan called a ten minute recess to 10:17 p.m.

2. Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). (Continued from February 25 2004):
Staff Contact: Staci Pereira.

Staci Pereira presented Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). Ms. Pereira explained that the City has prepared a Negative Declaration for Ordinance No. 38.763, which proposes to modify the following provisions as they relate to single-family dwellings:

- ☐ Remove the maximum number of unrelated persons that can occupy a dwelling,
- ☐ Require all occupants to function as a single housekeeping unit and provide a definition for single housekeeping unit,
- ☐ Require two parking spaces to be enclosed within the garage and permanently maintained,
- ☐ and expand the definition of a kitchen.

In addition, the project proposes to modify the location of the legal notice postings from the project vicinity to the project site.

Ms. Pereira recommended adopting the Negative Declaration (EA2004-1); and Adopt Ordinance No. 38.763 for amendments to the Zoning Ordinance Text (ZT2004-1) based on the findings and conditions noted in the staff report.

Commissioner Giordano asked who were the five local cities that were surveyed and Ms. Pereira replied Dublin, Santa Clara, Sunnyvale, San Jose, and Campbell.

Commissioner Giordano referenced the letter to Tambri Heyden from the Assistant City Attorney and mentioned that it speaks about regulation of overcrowding in residential homes and read the following from the letter: "thus if a particular property creates a public health hazard to the residents or a nuisance due to overcrowding, the City can proceed to abate the nuisance pursuant to its nuisance abatement ordinances. Enforcement of these ordinances may mitigate many of the negative aspects of overcrowding and may result in the tenants or the landlord voluntarily reducing the number of persons living in the residence".

Commissioner Giordano asked staff for clarification.

Mr. Lindsay explained that the nuisance abatement process is part of the code enforcement section and it is a way of enforcing it, unfortunately, its not the most effective way. Proving a nuisance and continuing to take it through the enforcement process takes a long time. The burden of proof is much stronger to make that case. For a single-family owner to understand the regulations up front is important. With a clear ordinance, if a resident is considering doing something in their home, they can turn to the ordinance and get a good handle on the regulations. By providing this up front, the expectations are made clear by the City by codifying it instead of relying on a health and safety nuisance factor. Somebody may have been doing something that they thought was okay and they have been doing it for awhile and now the burden of proof is on the City to prove a nuisance. What we are doing here is get it out of the nuisance environment and more of a zoning violation and provide all of the expectations in a very clear way up front for the homeowner so they can understand the parameters in which they can work with.

Commissioner Giordano asked if it becomes a zoning violation is that recorded against the property. Mr. Lindsay replied that it is not recorded against the property but staff has an administration process where they can actually fine the property owner for non-compliance within the zoning district.

Commissioner Giordano asked where do neighbors go if they detect a violation in their neighborhood. Ms. Pereira replied that a neighbor should call the code enforcement hotline and they will respond to the situation.

Chair Nitafan asked Attorney Faubion to expand on property rights.

Attorney Faubion stated that in any kind of a regulatory structure such as a zoning structure and health and safety codes, there is always some element of saying, "no you can't do that", even though you really want to and to the extent that somebody interprets or clearly has a property right. Just the regulation and the City's discretion to legislate for the common good through its police power, often times that will infringe upon private rights and that is why they have to explain why they are doing that. Often times when the restrictions are codified in the zoning ordinance, it does provide that advance notice where at least people then know up front what the rules are and what they can and cannot do if someone really feels that a proposed rule is unfair and unconstitutional and really treads on their right than they can take it to court and challenge it. But the police power is broad and is what the City normally uses to regulate these kinds of things, and to the extent that there is some infringement on property rights that just does happen sometimes.

Chair Nitafan commented that hopefully the City will not have any class action suits on this because the laws are privileged to convert their garage into living space.

Commissioner Mohsin asked if residents can leave an anonymous message on the code violations hotline and Mr. Lindsay replied, "Yes".

Chair Nitafan opened the public hearing.

Resident, 286 N. Abbott Avenue, disagrees with the amendment to remove the number of unrelated persons. He knows of a case in New York where they built 20 story buildings and they became uninhabitable. The City tore them down because they had multiple people living there and were unrelated and women were molested. In Chicago, slumlords converted these buildings and made 15 to 20 rooms in them, and they became slum areas. The City cleaned them up and built single dwelling units. In San Jose, the same situations exist and he doesn't want to see that happening to people.

Cece Zamora, 1955 Everglades drive, representing 15 people that have been working in the City to see this come up and bring this issue to a head, is glad to see it and really hopes that the Commission approves the changes being presented because it is important for the City and young families and long overdue. She stated in about ten years, the streets will be full of cars because of what has been allowed to happen in homes. The cultural differences are fine and great. She thinks that the City needs to have mechanisms to put some limitations on parking and make some provisions for excess vehicles that add to blithe to the city, which she doesn't want to see it become.

Norma Tritton, 286 N. Abbott Avenue, stated that multiple people living in dwellings is not going to work and doesn't want to see her neighborhood become a slum. She commented that over 40 years ago, she wanted to add a second story to her house and the City wouldn't allow it and then a year later, anyone could do it. She did add a one bedroom, but things didn't seem to work out. She stated that if you go into any restaurant you'll see a sign that says maximum capacity and doesn't see why there is not maximum capacities in a home.

Rob Means, 1421 Yellowstone, doesn't understand what the objective is of the amendments and felt the City should tax cars. He felt that a PRT system should be provided so people don't need a car to get around. He felt that we are squelching affordable housing and resource utilization. "If we can't convert a garage, then we are forcing people to use more trees and materials to build more structures to house people that need to be housed. We are not moving towards the way of energy sufficiency and resource sufficiency when we talk about these changes".

Heidi Wolfe-Reid, 1397 Yosemite Drive, commented that she is not crazy about garage conversions and noted there is a huge difference from the ones in Milpitas compared to the ones in San Jose. She stated that the garage conversions in Milpitas are safe and beautiful, and the ones in San Jose are a death trap. Regarding occupancy, she stated that you can't regulate the amount of occupancy and noted that her consultant could not find blithe in the City.

Bill Ferguson, Rivera street, is unclear about the proposed amendment. He lives around Milpitas High and parking is limited from 8 am to 5 pm and felt that the proposed amendments are saying something negative about roommates. He pointed out that it is normal and mainstream to live in a house with roommates because houses are expensive and it takes a large income to buy one. He felt that the City should be more open and accepting, and should allow people to live the way they want to. He also felt that the City shouldn't look down on people that are low income or saving money and people can be employed, laid off, or are living with roommates to save money. He asked that the Commission vote against the amendment.

Close the public hearing

Motion to close the public hearing.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Commissioner Giordano stated that parking is a real problem and staff has come up with a creative solution in terms of room count and definition of a family unit. She will support what staff brought, however, she encourages the Commission to allow garage conversions to stay in place. She stated that affordability is key in the community with the price of housing. She has seen more and more the need for extended families to have additional space because of aging parents, children that leave home and return with their children and the growing need to have the family relocate.

Commissioner Garcia pointed out that that the real problem is parking and overcrowding in neighborhoods and housing. What staff discovered last year is that the code is unenforceable. He pointed out that the problem with garage conversions is that the streets are too small to accommodate another 2 to 3 cars. It is a tough choice and an affordability issue but the City should establish clear standards and felt that garage conversions should be eliminated.

Vice Chair Lalwani recalled that at the last meeting it was mentioned that half of the garage could be converted and needed clarification. Ms. Pereira stated that at the last meeting, only a portion of the garage was allowed to be converted and half would need to be maintained for an enclosed parking space. Since then, the CAC concluded that to prevent garage conversions altogether was appropriate.

Mr. Lindsay clarified that state and federal laws have preempted the City's ability to regulate how a single family operates. The proposal would allow an extended family to be together and operate as a single housekeeping unit. A lot of the families in Milpitas operate that way because there are several generations living together. The proposed definition would continue to legitimize that as long as families are living as one unit and use common areas.

Regarding affordable housing, Mr. Lindsay stated that it is a big issue throughout the county and the second family unit legislation was passed to help address that issue so people can continue to operate second family units within their home and have a renter live independently within the home or as an accessory structure outside the home. People can rent out their rooms based on the regulations the City is proposing and can board people in their house if they offer meals with rent. It would allow them to rent out two rooms without getting a permit from the City as long as they are meeting the definition of a boarding house and they provide parking space on the property for each of the rooms they are renting. Within what staff is recommending, there are still elements being retained to address the continuing need of affordable housing and the need to have extended families within the home.

Chair Nitafan agreed with Commissioner Giordano to retain the ability to convert the garage. He gave an example from his homeowner association that they allow 2 cars in a garage, and 2 cars in the driveway, and that cars are not allowed to park on a red painted curb area. He felt that the overall issue is a parking issue and it shouldn't matter how many people are living in a house and if they convert the garage they can park in the driveway. He thought that the City should look at parking issues.

Commissioner Mohsin commented that she is concerned about parking and wanted the City to look at different avenues to address the parking concern.

Commissioner Garcia pointed out that the whole point of the exercise is that there is serious parking problem in the City and the first step should be to stop garage conversions.

Commissioner Sandhu agrees that this is a parking issue and said that when you compare affordability with the parking issue, affordability takes precedence and parking should be addressed separately. He felt that if you don't park accordingly, you should get a ticket and there are solutions for parking situations. He is not in favor of not allowing garages to be converted.

Tambri Heyden, Acting Planning and Neighborhood Services Director, commented that the CAC subcommittee is still working on the parking issue and should be bringing something forward to staff in the near future, which staff will then bring to the Planning Commission.

Motion to approve Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763) and removing Item No. 13 (Section 4.07) of garage conversions.

M/S: Giordano/Sandhu

AYES: 4 (Giordano, Sandhu, Chair, Galang)

NOES: 3 (Lalwani, Garcia, Mohsin)

IX. NEW BUSINESS

3. "S" ZONE APPROVAL AMENDMENT NO. SA2004-3 at 755 Yosemite Drive. Applicant: *Lori Gilliam*

Dennis Carrington, Senior Planner presented "S" Zone Approval Amendment No. SA2004-3, a request to replace seven existing cabinet logo signs with (2) new internally illuminated individual channel letter wall signs for Bottomley Distributing Company located at 755 Yosemite Drive and recommended denial.

Chair Nitafan invited the applicant to speak.

Lori Gilliam, Applicant, stated that the project is simple because the applicant is trying to update the signs that were originally installed in 1983 and it is quite cluttered and dated looking now. The new sign will clean up the look and will update the low level lumination LED sign and that the new proposed sign is energy efficient.